Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Consumer Protection in the Broadband Era	)	WC Docket No. 05-271
	)	

REPLY COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

The Satellite Industry Association ("SIA") hereby files these Reply Comments in the above-captioned proceeding, in which the Commission asks whether certain common carrier obligations related to consumer protection should be applied to broadband Internet access services.[1] As discussed herein, the market for broadband Internet access services is characterized by vibrant and growing competition between satellite operators and other service providers, which is making broadband Internet access more pervasive, while facilitating higher connection speeds, more diverse service offerings, and lower costs to consumers. These benefits are most likely to be fully realized if satellite broadband providers are allowed to operate free from unnecessary common carrier obligations, which tend to stymie competition and innovation. SIA thus stands with the diverse array of commenters that have urged the Commission to refrain from imposing common carrier obligations on broadband Internet access service providers. Instead, SIA urges the Commission to affirmatively act to ensure healthy competition and innovation by preempting state regulation in this area.

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[1] S*ee Consumer Protection in the Broadband Era*, *Notice of Proposed Rulemaking*, WC Docket 05-271 ("*Broadband NPRM*"), included in *Appropriate Framework for Broadband Access to Internet over Wireline Facilities*, WC Docket 05-271, FCC 05-150 (Sep. 23, 2005) ("*Wireline Broadband Order*").

Background

SIA. SIA is a U.S.-based trade association providing worldwide representation of the leading satellite operators, service providers, manufacturers, launch services providers, remote sensing operators, and ground equipment suppliers. SIA is the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business. SIA includes Executive Members: The Boeing Company; The DirecTV Group; Globalstar LLC; Hughes Network Systems LLC; ICO Global Communications; Intelsat Ltd; Iridium Satellite LLC; Lockheed Martin Corp; Loral Space & Communications Ltd; Mobile Satellite Ventures LP; Northrop Grumman Corporation; PanAmSat Corporation; SES Americom, Inc, and TerreStar Networks Inc; and Associate Members: ATK Inc; EMC Inc; Eutelsat Inc; Inmarsat Ltd; IOT Systems; Marshall Communications Corp; New Skies Satellites Inc; Spacecom Corp; Stratos Global Corp; and XM Satellite Radio.

Broadband NPRM. On September 23, 2005, the Commission issued the *Broadband NPRM*, asking whether certain common carrier obligations related to consumer protection – including Customer Proprietary Network Information, anti-slamming, truth-in-billing, network outage reporting, and service discontinuance requirements – should be applied to broadband Internet access services.

Discussion

Today, satellites have the capability to provide broadband Internet service across the United States, with a number of satellite companies already providing high-speed broadband Internet access services. Next-generation satellite broadband services will provide significantly higher access speeds at lower cost to both urban and rural Americans. In short, as the Commission has recognized, satellite-provided broadband Internet access services may provide

one of the best potential options for millions of subscribers.[2] While these services benefit all Americans, they will continue to be especially valuable to consumers in rural, unserved, and underserved areas.

Large portions of the United States are not now, and may never be, served by either cable or DSL due to the cost of wiring remote areas or technical limitations.[3] In contrast, satellite systems have nationwide coverage areas and are able to offer high-quality, ubiquitous service to low-population density areas that may not have enough demand to motivate a terrestrial build-out. Satellite technology does not require access to the local telephone exchange or laying cable in low-density areas; by targeting a satellite beam toward a particular region of the United States, satellite-based services can reach every square mile of that region, even the most isolated areas. Simply put, satellite operators are able to provide first- and last- mile connectivity to rural areas more effectively than terrestrial systems, which have historically focused their deployment on high-density urban areas.

Thus, satellite operators will continue to contribute to the vibrant and growing competition in the market for broadband Internet access services, which is making broadband access more pervasive, while facilitating higher connection speeds, more diverse service offerings, and lower costs to consumers. However, these benefits are most likely to be fully realized if satellite broadband providers are allowed to operate free from the common carrier obligations proposed in the *Broadband NPRM*, which would tend to stymie competition and

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[2] *See 2000 Biennial Regulatory Review - Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Fifth Report and Order, 20 FCC Rcd 5666, at ¶ 1 (2005).

[3] *See Connected and on the Go: Broadband Goes Wireless: Report by the Wireless Broadband Access Task Force*, GN Docket No. 04-163, at 45-6 (Feb. 2005) (noting that wireline broadband access is unavailable in many rural areas, resulting in markedly lower broadband penetration rates in rural areas than urban areas).

innovation among satellite broadband providers, while slowing the implementation of next-generation satellite broadband services.[4] SIA therefore urges the FCC to observe its historical policy in favor of the minimal regulation of satellite services by refraining from imposing any common carrier obligations on satellite broadband service providers.[5]

SIA also stands with the diverse array of commenters that have urged the Commission to refrain from imposing common carrier obligations on broadband Internet access service providers generally.[6] More specifically, SIA echoes the contention of Cingular Wireless LLC that "[n]o more regulation should be applied than is clearly necessary due to market failure[.]". Cingular Comments at 2. Simply put, there is no demonstrable need to impose common carrier

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[4] It is unclear whether the Commission could properly impose common carrier obligations on satellite broadband providers in the context of the *Broadband NPRM*. The *Broadband NPRM* is included in the *Wireline Broadband Order*, which is limited in scope to wireline broadband services. Further, the *Broadband NPRM* does not specifically discuss satellite broadband services, and at no time addresses the particular characteristics of satellite broadband markets or the particular needs of satellite broadband subscribers. Accordingly, the imposition of common carrier obligations on satellite broadband providers would raise serious questions under Section 553 of the Administrative Procedures Act as to whether the Commission provided adequate notice of its intentions. *See* 5 U.S.C. §553. *See also, e.g., Small Refiner Lead Phase-Down Task Force v. E.P.A.*, 705 F.2d 506, 547 (D.C. Cir. 1983) (final rules must be the "logical outgrowth" of proposed rules, such that they are subject to true public scrutiny).

[5] *See, e.g., Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, 11 FCC.Rcd 21581, at ¶ 2 (1996) ("Streamlined regulation will help the U.S. satellite industry to continue to expand and compete in the world-wide telecommunications market [and will] free satellite service providers from unnecessary regulatory burdens, and, enable them to respond more quickly to customers' needs."); *Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference*, 90 FCC.2d 676, at ¶ 81 (1982) ("By imposing few regulatory restrictions we will allow operators the flexibility to experiment with service offerings to find those that the public needs and wants, and to experiment with technical and organizational characteristics.").

[6] *See, e.g.*, Comments of the United State Telecom Association, WC Docket No. 05-271 (Jan. 17, 2006); Comments of BellSouth Corporation, WC Docket No. 05-271 (Jan. 17, 2006); Comments of the National Cable and Telecommunications Association, WC Docket No. 05-271 (Jan. 17, 2006); Comments of Time Warner, Inc., WC Docket No. 05-271 (Jan. 17, 2006); Comments of CTIA – The Wireless Association, WC Docket No. 05-271 (Jan. 17, 2006); Comments of Cingular Wireless, LLC, WC Docket No. 05-271 (Jan. 17, 2006) ("Cingular Comments").

obligations on broadband Internet service providers. Robust competition among service providers, satellite and otherwise, not only drives the benefits discussed above, but also compels service providers to respond to consumer needs and to respect consumer interests in order to remain competitive. In the absence of clear evidence of harm in the *status quo*, there is no justification for disrupting the market forces that are creating such manifest benefits for consumers.

Moreover, in the absence of such justification, the Commission should not test the limits of its ancillary authority under Title I of the Communications Act.[7] As Cingular notes, nothing in the Act explicitly provides the Commission with the authority to impose new common carrier obligations on broadband Internet access service providers. Cingular Comments at 4. To the contrary, Congress has clearly expressed its intent that the Commission refrain from imposing regulatory burdens on broadband Internet access service providers. Section 230(b)(2) of the Communications Act, as amended, provides that it is the policy of the United States "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 C.F.R. §230(b)(2). Section 332(c) of the Communications Act, as amended, further suggests that the Commission should forbear from imposing common carrier obligations on CMRS providers – including MSS providers classified as CMRS providers[8] – where, as here, such obligations would serve only to disrupt competitive market conditions. 47 C.F.R. §332(c). Accordingly, SIA urges the

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[7] *See American Library Association v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005) ("[A]ncillary jurisdiction is limited to circumstances where: (1) the Commission's general jurisdictional grant under Title I covers the subject of the regulations and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.").

[8] Although the Commission has treated certain MSS providers as CMRS providers for limited purposes, such treatment does not justify any departure from the Commission's historical policy in favor of the minimal regulation of satellite services.

Commission to refrain from imposing any common carrier obligations on broadband Internet access service providers.[9]

Instead, the Commission should ensure that consumers continue to reap the benefits of unimpeded market competition by preempting state regulation of broadband Internet access services. Broadband Internet access services generally, and satellite broadband Internet access services in particular, are inherently interstate services, subject to exclusive federal jurisdiction.[10] Permitting states to impose a patchwork of regulations on broadband Internet access services would render meaningless federal policy seeking to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." As state action would "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," preemption is both appropriate and necessary to vindicate federal policy, protect consumers, and ensure healthy competition.[11]

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[9] The regulation of wireless broadband Internet access services is also inappropriate because the Commission has not yet addressed the proper classification of these services. While SIA expects the Commission to recognize that wireless broadband Internet access – through satellite or other means – is properly classified as an "information service," it makes little sense to even consider imposing regulatory burdens on wireless providers before this determination is made.

[10] *See, e.g., GTE Telephone Operating Cos.*, 13 FCC Rcd 22466, at ¶ 1 (1998), *recon.*, 17 FCC Rcd 27409 (1999) (provision of high-speed Internet access is an interstate service). *See also* 47 U.S.C. §152(a) (establishing federal jurisdiction over interstate communications). Further, Section 332(c)(3)(A) of the Communications Act, as amended, expressly preempts states from regulating the rates and market entry of CMRS providers. 47 U.S.C. §332(c)(3)(A).

[11] Although it is unclear whether the Commission has sufficient ancillary authority to impose new common carrier obligations on broadband Internet access service providers, the Commission retains jurisdiction under Sections 152 and Section 230 to deregulate such services, in a manner that advances and is fully consistent with Congressional policy, by preempting state regulation in this area. *See, gen., City of New York v. FCC*, 486 U.S. 57, 63 (1988) ("It has long been recognized that many of the responsibilities conferred on federal agencies involve a broad grant of authority to reconcile conflicting policies" of the states and the federal government).

Conclusion

As discussed herein, the Commission should refrain from imposing any common carrier obligations on broadband Internet access service providers at this time, and should preempt state regulations in this area.

Respectfully submitted,

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